S.B.Civil Misc.Appeal No.405/92.
Executive Engineer, RSEB & anr.
vs.
Smt. Pradeep Sharma & ors.

Date of Order: 01.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Yashwant Mehta for the appellants.
Mr.I.R. Choudhary for the respondent.

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This appeal is against the award dated 28.9.1992 passed by the learned Workmen Compensation Commissioner, Sri Ganganagar in Claim Case No.30/90.

Brief facts of the case are that one Brij Bhusan Sharma was working under the employment of appellant Rajasthan State Electricity Board, as A.S.O. On 21.10.1989, at about 10.30 a.m. he died due to drowning. The deceased Brij Bhusan Sharma's wife, daughter and sons submitted claim petition before the learned Workmen Compensation Commissioner, Sri Ganganagar claiming compensation of Rs.1,28,471/-

The non-applicant appellant submitted reply to the claim petition and stated that Brij Bhusan Sharma has not died while discharging duties under the employment of the appellant. In fact he committed suicide which is proved from the medical report and, therefore, the claimants

are not entitled to any compensation from the appellant. Issues were framed and the parties produced evidence. The learned Workmen Compensation Commissioner held that the deceased was in service on 21.10.1989. He was working in the power house which was near the down-stream site and his body was found near the bank of the down-stream. The witnesses stated that he died when he was on duty. The learned Workmen Compensation Commissioner rejected the defence of the employer that the deceased was on leave from 4.10.1989 to 19.10.1989 and thereafter he did not join duty. The learned Workmen Compensation Commissioner observed that the non-applicant appellant has not marked absent of the deceased for the dates 20.10.1989 and 21.10.1989, whereas there is direct evidence of the other witnesses in support of the claimants stating therein that the deceased was on duty on 21.10.1989. The learned Workmen Compensation Commissioner also held that the medical report also only says that the deceased died due to the drowning and, therefore, the death of the deceased near the site of the appellant-non-applicant proves that he died when he was on duty.

The appellants have principally challenged the award on the ground that the deceased was not discharging the duty on 20.10.1989 and 21.10.1989 and he was on leave. It is also submitted that the deceased committed suicide. Basically, the question raised by the

appellant is a question of fact only and it is not even the case of the appellant that any evidence was misread by the learned Workmen Compensation Commissioner. Otherwise also, all the facts came on record from the evidence of the parties, clearly show that the employee's duty was on the power house which is near the down-stream and while working in the employment, he met with this accident as his leg slipped into the said down-stream.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

The claimants have submitted cross-objection. According to the claimants, the compensation of Rs.97,334/- has been awarded to the claimants against the total claim of Rs.1,28,471/-. It is also submitted that the learned Workmen Compensation Commissioner has not imposed penalty upon the employer for not making the payment to the claimants because of the reason that the employer knowing well, did not pay the amount in time. The claimants also claimed interest @ 18% per annum.

I considered the grounds raised by the claimants. It appears that no opportunity of hearing was given to the employer for imposition of penalty by the learned Workmen Compensation Commissioner and it appears that issue has not been raised before the court below even by the claimants for imposition of penalty against the employer. In view of the above, I do not find any reason to impose penalty at this belated

stage. So far as award of interest is concerned, that has been awarded in accordance with Section 4-A of the Workmen's Compensation Act, 1923. Therefore, the cross-objection is dismissed.

(**PRAKASH TATIA),J.**

mlt.